

Docket No. F-8335

Ser. No. 10/501,971

REMARKS

The Examiner has objected to the abstract and Applicant has amended the abstract to overcome the objections.

Claims 1-8 are pending and claims 4-5 have been rejected under 35 U.S.C. § 112, second paragraph because of recitations in Claim 4. Applicant has amended Claim 4 to overcome the rejections to claims 4 and 5.

Claims 1-3 are rejected under 35 U.S.C. §102(b) as being anticipated by Wills (USPN 978,343). Claims 4-5 are rejected under 35 U.S.C. §103(a) as being unpatentable over Wills as modified by Mohr (USPN 6,488,215). Claim 8 is rejected under 35 U.S.C. §103(a) as being unpatentable over Hayes (USPN 990,650). Claims 1 and 7 are rejected under 35 U.S.C. §103(a) as being unpatentable over Mohr as modified by Graham (USPN 605,866).

Applicant herein traverses the above rejections. Applicant has amended claims 1, 5 and 8 to recite that either the connections between the bar joists of each individual block are welded together or the protruding reinforcement parts are

Docket No. F-8335

Ser. No. 10/501,971

welded together. Furthermore, Applicant provides the following discussion relating to the patentability of the amended claims.

As indicated, the claims now recite that the reinforcement parts 2, 3 are welded together. Wills, on the other hand, discloses bolting joints to provide flexible joints. In comparison with Wills, the railroad ties of the present invention can be used with rigid railroad tracks so that a connection with a high stiffness and little elasticity is needed, and welding the joint connections provides the requisite stiffness. As the references fail to teach the claimed welded connection, the claims are patentable over the art. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) ("a claim is anticipated only if each and every element as set forth in the claim" is found in the cited prior art reference); *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974) (a prima facie case of obviousness is established only where the combination of cited references teaches or suggests each limitation in the claim).

Furthermore, Applicant asserts that the structure of the claimed invention is more adaptable to railroad ties of differing widths than Wells because the ties are aligned and welded at the building site so that precise prefabricated ties are unnecessary.

Docket No. F-8335

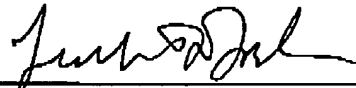
Ser. No. 10/501,971

The USPTO is hereby authorized to charge any fee(s) or fee(s) deficiency or credit any excess payment to Deposit Account No. 10-1250.

In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited.

Respectfully submitted,

JORDAN AND HAMBURG LLP

By 

Frank J. Jordan

Reg. No. 20,456

Attorney for Applicants

Jordan and Hamburg LLP
122 East 42nd Street
New York, New York 10168
(212) 986-2340

FJJ/TDB/cj